

U.S. Customs Service Office of Strategic Trade Regulatory Audit Division

Treatment of Ultimate Consignee Transactions in a Focused Assessment

Introduction

The Regulatory Audit Division has updated its policy concerning the treatment of ultimate consignee transactions in assessments and audits. These changes resulted from the implementation of the Focused Assessment (FA) and an ongoing effort to address trade concerns.

Consignee numbers in the Customs Automated Commercial System (ACS) are used by Customs for targeting. Candidates for FAs are selected based on the volume and value of imports by consignee number as well as for other reasons. Also, compliance measurement examinations are conducted based upon the consignee number. The objective of a FA is to evaluate the risk to Customs that the company's (company or "account," whether the company is acting as importer of record (IOR) or consignee) importing process may result in significant noncompliance with laws and regulations.

In 80 to 90 percent of ACS transactions, the IOR and consignee numbers for an account are the same. The current policy is to select sample(s) of transactions, either from ACS or from the auditee's books and records.

FAs provide Customs with the ability not only to review and verify what the company disclosed to Customs and is available in ACS, but also to review the company's books and records to identify what may not have been disclosed to Customs. While this seems simple, it often requires substantial audit work to determine the role of the auditee in a foreign transaction.

Owners, importers, consignees, importers of record, entry filers, and/or other parties who actually engage in or knowingly cause importation, transportation, or storage of merchandise carried into or held under bond into or within the United States are responsible for maintaining and rendering for inspection all records normally kept in the ordinary course of business pertaining to that activity. Also included in this requirement are agents of the above parties or persons whose activities require filing of a declaration, entry, or both, as well as filers of drawback claims.

When ACS shows a different IOR and consignee number, the FA team must determine whether the auditee acted as IOR or consignee and whether tested transactions were included in a Customs entry. Determining what should have been entered and whether it was entered according to law and regulation is the key to an effective audit. When the IOR and consignee numbers are different, FA teams must be careful not to disclose confidential ACS information about the IOR to the consignee being audited.

Procedures

The following procedures apply to the 10 to 20 percent of transactions where the auditee is the consignee but not the IOR.

Whether the sampling frame(s) is selected from ACS or the auditee's records, the FA team will determine the extent of company involvement in the transaction. These procedures will be followed:

1. The FA team will select the sample(s) without removing any items, but will select additional items based on the estimated percentage of consignee entries in the sample. The purpose of the additional items is to maintain the appropriate sample size if the FA team later removes some items from the sample.
2. The FA team will ask the auditee to provide whatever records the company has to support value, classification, etc., to determine if the Customs entry is correct. The records requested will be those kept in the ordinary course of business, as required by 19 U.S.C. 1508—for example, specification sheets (product samples), purchase orders, payment records (wire transfers, checks, etc.), freight bills, inventory receipts, and packing lists.
3. A determination will be made as to whether the sampled transaction should be removed from review during the FA. For purposes of determining whether a specific sampled transaction should be removed, the FA team will consider the totality of the circumstances relating to the transaction. The FA team will consider the following factors and determine whether the evidence reflects that the company:
 - Controlled the terms and conditions of a sale and negotiated a price with a foreign company;
 - Provided assists (e.g., technical data, molds, equipment, product assistance, material, components) with knowledge that they would be used in the manufacture or production of imported merchandise;
 - Sent a purchase order to a foreign company;
 - Provided specifications for imported merchandise directly to a foreign manufacturer;
 - Paid a foreign company; or
 - Caused the importation as provided by any other evidence.
4. If the evidence shows that the auditee did not cause the importation, the FA team will remove the item from the sample(s) and replace it with a selected additional item. Otherwise, the FA team will review the transaction and include the item for purposes of computing the FA compliance rate. The consignee will be responsible for reporting required entry information to the importer of record for Customs entry. But, in the absence of fraud or collusion, a consignee who is not an importer of record will not be responsible for reporting information correctly on the Customs entry.
5. For purposes of computing loss of revenue (LOR), the LOR will not include those transactions where the auditee is the ultimate consignee but not the importer of record. The IOR or the surety is the principal party liable for duties and fees. However, the FA team will determine if a referral of the finding is appropriate. The FA team will consider the following:
 - Repetitiveness of the transaction error(s),
 - Frequency of the transactions, and
 - Evidence that the consignee met the criteria for possible penalty action under 19 U.S.C. 1592.

If referral is warranted, referral should be made as appropriate to the account manager for the IOR. Also, if the finding qualifies, the issue should be referred to the appropriate Enforcement Evaluation Team.